

1 ago, over a year ago. I have been retired for
2 approximately a year now.

3 Q. And what was the issue of concern that he
4 had on his mind that he discussed with you?

5 A. Carl spoke of some of the same issues, you
6 know, as it relates to morale and equipment. And I
7 think that those items have been addressed, just as
8 I instructed Carl to talk to Chief Hunter.

9 Q. Do you know if he was a union member at the
10 time?

11 A. Yes, he was.

12 Q. And where was this conversation?

13 A. National Guard Armory.

14 Q. And how long did the conversation take
15 place, roughly?

16 A. Not very long. I'm going to say five, ten
17 minutes at the most.

18 Q. And did he address, on this occasion,
19 staffing?

20 A. I don't know that he addressed all the
21 issues.

22 Q. Did he address employee morale?

23 A. He addressed the morale.

24 Q. What about swap time?

25 A. No. I think -- no. He may have now. We

1 got the swap time, I think, straight a year ago,
2 something like that.

3 Q. In this conversation, did he address
4 staffing or equipment or firefighter safety?

5 A. He talked some of the staffing and of the
6 equipment.

7 Q. So how did that conversation end? Did you
8 say you were going to look into it or did you
9 suggest that he follow up --

10 A. I told him I think I understood some of his
11 concerns.

12 Q. And did you do anything after that?

13 A. No, sir. We were already working on it.

14 Q. So you didn't communicate with any chief
15 officer in the fire department about this
16 conversation?

17 A. No, sir. I don't go straight to the chief
18 officer. I talk to the chiefs. You know, when it
19 comes down to that, I'll listen to any employee that
20 wants to talk to me, but I'm going to go back to
21 that department head.

22 Q. And this gentleman was named Taylor?

23 A. Taylorson. Carl Taylorson.

24 Q. Carl Taylorson?

25 A. He was a driver/engineer at the time, I

1 think.

2 Q. And a union member at the time?

3 A. Yes, sir.

4 Q. Did you consider Carl Taylorson to have
5 violated the Merit System's rules and regulations
6 about chain of command when he addressed these
7 directly to you?

8 A. Not really. Not in the manner that he did
9 that, no, I did not.

10 Q. When you say not in the manner, why? What
11 do you mean by that?

12 A. I instigated the conversation. I asked him
13 how things were going at the fire department. I
14 think when you do that, you open the door.

15 Q. Okay. So he was never charged or
16 disciplined for discussing it with you, was he?

17 A. No, sir.

18 Q. Were there any other individuals -- I think
19 you mentioned there were several firefighters.

20 A. I've had a lot of firefighters -- I know a
21 lot of them out there, and a lot of them will talk
22 to me. But as far as me giving them a yes or no
23 answer, I don't do that.

24 Q. Do you know if firefighters have talked
25 directly to city council members about issues of

1 concern to them that are going on in the fire
2 department, whether it's firefighter health and
3 safety, staffing, equipment?

4 A. That would be hearsay, and I would not know
5 of -- I don't like to testify like that. I don't
6 know of any direct contact. I know what I have
7 heard, and I cannot testify to that.

8 Q. Well, there's no rules preventing you from
9 testifying.

10 A. Well, I've heard that they have talked with
11 them.

12 Q. I'm sorry?

13 A. I've heard they've talked with them, yes,
14 sir.

15 Q. Have talked with the city council members?

16 A. Yes, sir.

17 Q. Do you know if Mr. Davis has spoken to city
18 council members about issues?

19 A. I know they have, yes, sir.

20 Q. How do you know that?

21 A. Well, I have had a conversation with both
22 Councilman Bush and, of course, Mayor Hardin.

23 Q. And what's the substance of that?
24 Mr. Davis's communications about issues of concerns
25 that --

1 A. Well, as far as the mayor goes, I
2 understand that he told me about going to a
3 retirement supper, or luncheon one, for Todd Boatner
4 with the firefighters. And Councilman Bush has
5 mentioned the operation of the fire department a
6 couple times to me.

7 Q. Okay. But your understanding is that Davis
8 has raised those issues?

9 A. Well, yes. I understand that Sergeant
10 Davis and Councilman Bush's brother are real -- are
11 good friends or know one another or are
12 acquaintances.

13 Q. Okay. Do you recall any other discussions
14 Mayor Hardin may have had with firefighters about
15 issues of concern in the fire department?

16 A. Not to my knowledge.

17 Q. Okay. Any other individual firefighters
18 other than Taylorson that you can recall discussed
19 issues of concern in the fire department with you?

20 A. Not by name, I do not.

21 Q. But there have been other firefighters?

22 A. There have been other firefighters, yes,
23 sir.

24 Q. Did you ever follow up in trying to get
25 them charged with discipline for deviating from the

1 chain of command or the Merit System's --

2 A. I did not.

3 Q. -- rules? You're going to have to let me
4 finish my questions before you begin your answer.

5 Do you understand that?

6 A. I understand.

7 Q. Let me invite your attention to
8 Exhibit 14. And this appears to be a newspaper
9 article. My understanding, it's the Columbus
10 Ledger-Enquirer and I believe it's an article that
11 came out in September 2005. Does this look familiar
12 to you?

13 A. I've read the article, yes, sir.

14 Q. Okay. And when you read this newspaper
15 article at that time, what was your reaction to it
16 as a city manager?

17 A. How do you mean reaction?

18 Q. Were you upset? Were you annoyed? Were
19 you going to take some action in response to the
20 article?

21 A. Not in response to the article, no. Was I
22 annoyed or upset?

23 Q. Yes.

24 A. Anytime anything happens to the city,
25 whether it be with any department, you hate for it

1 to get in the paper.

2 Q. I'm sorry. What?

3 A. Anytime anything happens to the city, you
4 hate for it to get in the paper.

5 Q. Bad publicity?

6 A. That's -- total concept, yes, sir.

7 Q. So is it fair to say you were annoyed and
8 upset about the substance of this article?

9 A. I think you could say that we were annoyed
10 by it.

11 Q. Okay. So after you read it and you were
12 annoyed, did you do anything with the fire
13 department or the chief over there? Talk to them?

14 A. Well, I think -- I don't know whether I
15 talked with Wallace the next -- this was on a
16 weekend, if I remember right. I believe this was on
17 a weekend. I don't know whether I talked with him
18 on Monday or Tuesday and, you know, verified some of
19 the things, and we talked about the article in just
20 general terms. That was it. I do not get into the
21 day-to-day operations unless they ask me to -- of
22 any department.

23 Q. I understand. When you discussed this with
24 Chief Hunter, this article and the substance and the
25 comments, did you give any instructions to Chief

1 Hunter to do anything specifically?

2 A. I think Chief Hunter informed me that he
3 was planning on doing an investigation or something
4 to that effect. And I think my instructions to
5 Chief Hunter is to be sure you check with the city
6 attorney to make sure that you're on solid legal
7 ground on whatever outcome.

8 Q. And what kind of investigation was Chief
9 Hunter contemplating?

10 A. I have no idea.

11 Q. You didn't ask him?

12 A. No, sir. I did not.

13 Q. Okay. Some of the comments made in this
14 newspaper article were from, of course, David
15 Davis. In part, you'll see there in the second
16 column he was quoted as saying, morale is at the
17 lowest point since I have been here in the fire
18 department. And they list him as the president of
19 the Phenix City Firefighters' Association. When you
20 read that, did that trouble you or cause you to
21 contact Chief Hunter and explore the morale
22 situation in the fire department?

23 A. No, sir. I've already heard that
24 complaint.

25 Q. Were you at all concerned that the chief,

1 Chief Hunter, was not doing anything about the
2 morale? Because it seems like it's a continuing
3 concern.

4 A. The morale issue is a rollover not just
5 from Chief Prater or Chief Hunter. It was a
6 rollover from a prior chief as well. This
7 department has been on a uphill struggle since the
8 '90s. And I think we are on a positive path to
9 correct that now. And that's what we've been
10 working on since I returned.

11 Q. Why do you think the morale has been such a
12 problem for such a long period of time in the city
13 fire department?

14 A. You know, not being a -- I don't know. I
15 really don't know how to answer that. I know it's
16 been a ongoing problem. I think we are trying to
17 correct any problems as far as equipment. But there
18 again, I go back down to the basic statement I made
19 while ago; that the first line supervisor and the
20 way he works his people and trains his people has a
21 great amount to do with the morale of any department
22 in communications through up to your chief.

23 Q. You'll notice in this article that the
24 subject was also addressed about understaffing. In
25 other words, apparently there were 51 slots or spots

1 in the fire department and only 44 were filled.
2 When you saw that, did that cause you to raise that
3 issue as a concern?

4 A. No, it did not, because there again, as
5 I've talked with you before and as Sergeant Davis
6 and them knew, that we were looking at hiring
7 people. You do have budget restraints and we were
8 able to combat any fire or any emergency that came
9 about. However, you did have firefighters that had
10 to work over.

11 Q. Later in the article, Mr. Davis indicates,
12 quote, we are reluctant to talk because of
13 significant fear of retaliation, being disciplined,
14 or fired, end quote.

15 A. Sir, I've been working for this city for 34
16 years. And whether it be a council or commission
17 form of government, there's never been any
18 intimidation or threat of firing or termination that
19 I know about.

20 Q. So you don't -- I guess you would not have
21 an explanation as to why Mr. Davis and several of
22 the other firefighters expressed that concern about
23 retaliation?

24 A. You know -- no, I don't. I think it's
25 unjustified.

1 Q. Do you know of a Sergeant Ann Land?

2 A. I do know.

3 Q. You do know her?

4 A. Yes, sir, I do.

5 Q. And I guess you're aware, because you read
6 this article, that she made a comment about the view
7 of the city's fire department is if you don't like
8 the job, you can leave it.

9 A. I read that.

10 Q. Did that trouble you or cause you to take
11 any remedial action?

12 A. I did not.

13 Q. Okay. Then there's a quote in here on the
14 third page. And there's some overlap in this
15 particular version of this newspaper article, but
16 there is a quote in here from Mr. McKoon: Quote,
17 the last three fire chiefs have tried to reason and
18 have been out of a job, McKoon said; my advice is to
19 run this thing like you are a drill sergeant on
20 Parris Island, end quote.

21 Do you see where it says that?

22 A. I do.

23 Q. Did you ever receive that kind of advice or
24 input?

25 MR. MCKOON: With all due respect, I don't

1 think that's the end of the quote, but --

2 MR. WOODLEY: Well, it goes on to say,
3 everybody at the top can't be wrong. Is that
4 what you mean?

5 MR. MCKOON: Yes.

6 MR. WOODLEY: That's the end of it.

7 Q. Did you ever have a conversation with
8 Mr. McKoon about running the fire department like a
9 drill sergeant at Parris Island?

10 A. No, sir, but I believe the fire department,
11 police department, and any law enforcement
12 organization has to be run in a military manner --
13 or a paramilitary manner, excuse me. And that
14 includes the chain of command.

15 Q. Do you think firefighters should be treated
16 the same as Marines?

17 A. I think they should be disciplined. A
18 Marine makes a good firefighter, sir.

19 Q. Now, it also indicates that Council Member
20 Ray Bush -- and I take it you know who he is, right?

21 A. Yes, sir.

22 Q. And you're laughing now. Is he a friend of
23 yours or an enemy?

24 A. He's a good -- he's a friend.

25 Q. Friend? Apparently, he tried to

1 participate in these disagreements among the
2 firefighters and their union and the city and tried
3 to mediate, as it says in the article, those
4 differences. Are you aware of that?

5 A. I read that in the article. I'm not aware
6 of that.

7 Q. Did you have any discussions with Mr. Bush
8 as a council member about these issues?

9 A. As a mediator, no.

10 Q. How about in general of these issues of
11 concerns at the fire department?

12 A. As I stated earlier, he's mentioned the
13 fire department a couple times and their issues.
14 And I've always told him that they were being worked
15 on.

16 Q. Did you think Council Member Bush was
17 acting out of line or outside his authority when
18 apparently he was trying to serve as a mediator on
19 these differences?

20 A. If he's trying to serve as a mediator, I
21 do, yes, sir, without council approval.

22 Q. Has Mr. Bush ever been told that he was
23 acting outside his authority?

24 A. I've never told him that.

25 Q. Do you know if he's ever been told that by

1 anybody else?

2 A. I have not. He was one of the authors of
3 this charter.

4 Q. And then you'll see a series of other
5 articles and letters to the editor about various
6 issues of concern within the fire department about
7 morale and swap time and other issues. I take it
8 you had the chance to read those letters to the
9 editor as well, correct?

10 A. I have not read every letter in the -- or
11 every article in the Ledger, but I've read the
12 majority of them, sir.

13 Q. So just to put this in context, after you
14 read that initial newspaper article in September
15 2005, you had a discussion with Chief Hunter, and
16 your understanding is that he was going to
17 investigate the matter; is that basically true?

18 A. That's basically what happened. I mean,
19 there was nothing new in the article that we did not
20 already know.

21 Q. Did you learn subsequently that after Chief
22 Hunter conducted his investigation on the issues and
23 individuals who were quoted in that newspaper
24 article, that he and the fire department issued a
25 counseling form to Mr. Davis?

1 A. I was.

2 Q. Why don't you look at Exhibit 16? This
3 appears to be that counseling form issued by the
4 fire department against David Davis, and it's dated
5 September 21, 2005. And I take it that would have
6 been shortly after that newspaper article; is that
7 about right?

8 A. I would have to look at the article, but I
9 assume it would be, too.

10 Q. You'll note in the first sentence this
11 counseling form says, quote, Sergeant David Davis
12 was counseled by Chief Hunter and Assistant Chief
13 Johanson on the 20th of September 2005 concerning
14 him making or publishing statements to the local
15 media, end quote. Do you understand that that was a
16 reference to that earlier newspaper article that we
17 spent a lot of time on?

18 A. It could have been to several media
19 statements. There's others put out other than
20 that. But that would be a fair statement to assume.

21 Q. Were you given a copy of this counseling
22 form?

23 A. I do not keep a copy of them, no, sir.

24 Q. But do you remember being given a copy of
25 this one?

1 A. No.

2 Q. You don't have to approve these, do you?

3 A. No.

4 Q. Did you ever discuss with Chief Hunter or
5 Assistant Chief Johanson why they issued this
6 counseling form to Davis?

7 A. No, sir, I didn't. I would assume it would
8 have been, though, by Merit System rules and
9 regulations or either their SOPs, whichever they
10 used at that particular time.

11 Q. And what are you referring to there?

12 A. SOPs?

13 Q. In the context of this communication with
14 local media.

15 A. Either it's going to be a Merit System
16 violation or one of their standard operating
17 procedure violations. Of course, the Merit System
18 will override any of their standard operating
19 procedures.

20 Q. You'll have to enlighten me. Explain how
21 Mr. Davis's communication with the local media and,
22 in particular, his comments in this newspaper
23 article --

24 A. I believe --

25 Q. You have to let me finish. I'm sorry.

1 Please explain to me, Mr. Roberts, how the
2 communications and comments that Mr. Davis made in
3 that newspaper article we were just discussing would
4 violate the Merit System rules and regulations or
5 SOPs of the fire department?

6 A. I would have to look at the rules and
7 regulations of the Merit System and not quote them
8 off the top of my head. But I believe it will tell
9 you something about talking with the media. If it
10 is not there, then I would have to review the
11 SOP, and I do not know the fire or police SOP by
12 heart.

13 Q. Well, then let's review it. Exhibit 3,
14 which is an excerpt from the Merit System rules and
15 regulations. And to shorten this, you may want to
16 look at page 3 of this document, Section 2.054,
17 where it addresses the subject matter of free
18 speech. And tell me when you're finished reading
19 that section.

20 A. I've read it, sir.

21 Q. Is this the section of the Merit System
22 rules and regulations that you were just trying to
23 recall when I was asking you questions about the
24 counseling form that was issued to David Davis?

25 A. That's correct.

1 Q. Please tell me, if you can, which comments
2 that Mr. Davis made in the newspaper article and was
3 quoted would impair discipline and harmony in the
4 workplace under Section 2.054 of the Merit System
5 rules and regulations?

6 A. I believe the headline itself as stated,
7 the alarm -- three alarm --

8 Q. Turmoil?

9 A. Yes, sir. I think that's going to cause
10 turmoil in the fire department, because I do not
11 believe a hundred percent of my firefighters or the
12 city's firefighters -- let me correct myself --
13 believes this. One hundred percent of our
14 firefighters are not disgruntled with their job.

15 And I also believe that it could impede job
16 performance on any negative quote by any city
17 employee in the paper that, you know, that could
18 cause someone to be intimidated against or feel peer
19 pressure from them, such as what's been the case in
20 the fire department.

21 Q. Okay. Anything else that would indicate
22 how Mr. Davis's comments in the newspaper article
23 would have impaired the discipline and harmony in
24 the fire department?

25 A. Not right off the top of my head.

1 Q. Okay. Same question with regard to the
2 next provision in this free speech section of the
3 Merit System rules and regulations. Can you give me
4 an example of how Mr. Davis's comments in that
5 newspaper article would impede job performance?

6 A. Well, it's just like I said. I think it
7 can -- by peer pressure.

8 Q. I'm sorry. What do you mean by that?

9 A. You know, I -- in organized labor, you
10 know, you can exert some force on nonunion workers,
11 and I think that has been shown to work in all
12 realms, whether it be firefighters, electricians,
13 plumbers, steamfitters, whatever. And I think some
14 of that, in my opinion, was evident.

15 Q. Well, do you think Mr. Davis's comment in
16 the newspaper article about poor employee morale in
17 the department, do you think that impeded job
18 performance?

19 A. I think it could have, yes, sir, I do.

20 Q. I don't want to know if it could have. Did
21 it actually?

22 A. I do, yes.

23 Q. Could you explain that happening?

24 A. Well, there --

25 Q. Or give me examples?

1 A. -- again --

2 THE REPORTER: I just can't get it down
3 when you're talking over each other.

4 MR. WOODLEY: We can take a break.

5 (Brief recess.)

6 Q. Mr. Roberts, I think we were addressing the
7 Section 2.054 of the Merit System rules and
8 regulations concerning the subject of free speech.
9 And I wanted to follow up on those questions by
10 asking you again, in light of the comments that you
11 are aware of that Mr. Davis made in that newspaper
12 article in September 2005, which of those comments,
13 if any, would have impeded job performance by him or
14 others in the fire department?

15 A. Let me try to answer it this way, see if
16 I -- anything that's going to deal with safety,
17 equipment, morale, the general public don't --
18 they're not familiar with fire department
19 operations. It gives a bad image in the total
20 concept of the operations, and it's really not a
21 true one, and it doesn't need to be in the paper
22 like that.

23 Q. Do you think --

24 A. It should be factual.

25 Q. Do you think the citizens and members of

1 the public have a right to know and receive
2 information about the operations of their fire
3 department?

4 A. If they get the proper perspective they do.

5 Q. And when you say proper perspective, would
6 that be consistent with your personal opinion of the
7 fire department? In other words, whatever the
8 firefighters happen to say should be?

9 A. I think the majority of the operations with
10 the fire department have the true opinions and know
11 what's being done to correct any negatives.

12 Q. Okay. Were there any comments in that
13 newspaper article by Mr. Davis that were untruthful
14 as far as you know?

15 A. I felt like they were.

16 Q. Which ones?

17 A. I think anytime you talk about the
18 staffing. I think the staffing is fine. I think we
19 man the vehicles. I think we man all fire
20 apparatus. I think we man the rescue trucks. I'm
21 not totally convinced -- totally not convinced that
22 the equipment was all that bad. We had some old
23 pieces of equipment; of course, due to budget
24 restraints you don't buy new engine apparatus every
25 day. And, too, the training. Some of the things

1 that he talks about in the article to me does impede
2 job performance and, you know, it can touch back on
3 the bottom -- personal loyalty to any of those. I
4 think it could hurt the loyalty of some of your
5 people as it relates to it.

6 Q. Well, sir, I'm not aware that Mr. Davis was
7 quoted, as I read this newspaper article, on the
8 subject of staffing or understaffing or the subject
9 of training. He was quoted as morale being at the
10 lowest that he's seen it in the fire department.
11 And he was quoted again in the article about being
12 concerned about potential fear and retaliation or
13 being disciplined or fired. But I don't see
14 anywhere in this article where Mr. Davis -- excuse
15 me -- was quoted about training or staffing
16 concern.

17 A. Well, I think, number one, he puts it this
18 way; he relates to reluctant to talk of -- let's see
19 how he put it. We're reluctant to talk about it
20 because of fear of retaliation and being disciplined
21 or fired. He's talking about the problems inside
22 the fire department. To me, I'm taking that he's
23 talking about everything we've been discussing,
24 which doesn't, to me, impede job performance, bottom
25 line.

1 Q. So your reading into his quote that he's
2 got fear or concern about retaliation or being
3 disciplined or fired, you're reading that as
4 criticism of training and understaffing. Is that
5 what you're telling me?

6 A. I'm reading anything he's saying that's
7 detrimental to the fire department, going back to
8 the complaints throughout the entire course of media
9 publicity is detrimental to the fire department.

10 Q. So bottom line is anytime a firefighter
11 criticizes the fire department and it gets in the
12 media, that's going to be bad for the fire
13 department?

14 A. It could be, yes, sir. It could be -- it
15 could be.

16 Q. And you would consider that wrong on the
17 part of the firefighter and a violation of the Merit
18 System's rules and regulations; is that fair?

19 A. Yes, sir, it is.

20 Q. Let me ask you a series of questions, which
21 you were here when I addressed them with Chief
22 Hunter in his deposition earlier today. Based upon
23 your experience with the city and particularly your
24 capacity as city manager, would it be a violation by
25 a firefighter here in the city -- a violation of the

1 Merit System rules and regulations if that
2 firefighter did not follow the so-called chain of
3 command?

4 A. I do. I believe that.

5 Q. Okay. And, specifically, if the
6 firefighter did not follow or pursue the chain of
7 command and spoke directly with the media
8 representative on the subject of inadequate staffing
9 in the fire department, would you consider that to
10 be a violation of the Merit System rules and
11 regulations?

12 A. Yes, sir.

13 Q. Would you consider that firefighter then to
14 be subject to discipline, perhaps firing, as a
15 result?

16 A. I would consider -- I would think that he
17 would fall in whatever category of Merit System
18 offense that was, whether it be termination,
19 suspension, written counseling statement.

20 Q. And, sir, in your capacity as city manager,
21 would a firefighter violate Merit System rules and
22 regulations if he did not follow the chain of
23 command but spoke directly to the media about health
24 and safety of firefighters on the job?

25 A. I do feel that would be a violation of the